

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MAYLINE ESPOSITO,

Plaintiff,

-against-

MEMORANDUM AND ORDER

15-0278 (FB)

CITY OF NEW YORK, GERARD
DELPRETE, Individually,
JOHN RYAN, Individually, MICHELLE
ORTIZ, Individually, MEGAN
CARROLL, Individually, ARTHUR
TRUSCELLI, Individually, NICHOLAS
VELEZ, Individually, JOHN BROOKS,
Individually, DAVID LUPPINO,
Individually,

Defendants.

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Appearances

For the Plaintiff:

BRETT H. KLEIN
Brett H. Klein, Esq., PLLC
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New York, New York 10007

For the Defendant:

ZACHARY W. CARTER
SUSAN P. SCHARFSTEIN
Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007

BLOCK, Senior District Judge:

Plaintiff Mayline Esposito (“Esposito”) brings this case against defendants Gerard Delprete (“Delprete”), John Ryan (“Ryan”), and the City of New York (“City”),¹ which

¹ Defendants Michelle Ortiz, Megan Carroll, Arthur Truscelli, Nicholas Velez, John Brooks, and David Luppino have been dismissed from this case in the course of litigation. As Esposito acknowledged in a November 22, 2016 letter to the Court, the only remaining defendants are Gerard Delprete, John Ryan, and the City.

arises from an October 2013 incident in which Esposito was allegedly falsely arrested, subjected to excessive force, strip searched, and subsequently subjected to malicious prosecution. Defendants now move to dismiss certain claims and for partial summary judgment pursuant to Federal Rules of Civil Procedure 12(b)(6) and 56, respectively.

Viewing the allegations and evidence in the light most favorable to Esposito, the Court finds facially plausible, *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and subject to “genuine issue of fact,” *Eastman Kodak v. Image Tech. Servs.*, 504 U.S. 451, 483-84 (1992), Esposito’s federal and New York state law false arrest claims against Ryan, federal² malicious prosecution claim against Delprete, federal excessive force claim against Ryan, state battery and related failure to intervene claims against Ryan, Delprete and the City, and federal³ strip search and related failure to intervene claims claim against Ryan and Delprete. Defendants’ motion is therefore DENIED.

SO ORDERED

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
January 6, 2016

² Esposito withdrew her state malicious prosecution claim against Delprete and the City in her opposition to defendants’ motion to dismiss and for partial summary judgment.

³ In her November 22, 2016 letter to the Court enumerating the remaining claims in anticipation of trial, Esposito listed a *state* unreasonable strip search claim. However, as defendants point out in the present motion, Esposito did not plead the state law claim in her complaint. She did not respond to this point in her opposition to the motion to dismiss. Thus, a state unreasonable strip search claim will not proceed to trial.